

**PROVIDER AGREEMENT
BETWEEN
THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
Bureau of TennCare
AND
[PROVIDER NAME]**

This Provider Agreement, herein referred to as the Contract, by and between the State of Tennessee Department of Finance and Administration, Bureau of TennCare, herein referred to as the State, or TennCare and **[PROVIDER NAME]**, herein referred to as the Contractor, is for the provision of home and community based services to the elderly and disabled, as further defined in the "SCOPE OF SERVICES."

A. SCOPE OF SERVICES:

- A.1. The Contractor agrees to provide the service(s) checked below to aged and disabled adults over the age of 21 in accordance with the terms stated in the Center for Medicare and Medicaid Services (CMS) approved 1915(c) Home and Community Based Waiver for the Elderly and Disabled.

- | | | |
|--|---|---|
| <input type="checkbox"/> Assisted Care Living Facility | <input type="checkbox"/> Adult Day Care | <input type="checkbox"/> Assistive Technology |
| <input type="checkbox"/> Case Management | <input type="checkbox"/> Home Delivered Meals | <input type="checkbox"/> Homemaker |
| <input type="checkbox"/> In-Home Respite | <input type="checkbox"/> Inpatient Respite | <input type="checkbox"/> Minor Home Modifications |
| <input type="checkbox"/> Personal Care Attendant | <input type="checkbox"/> Personal Care Services | <input type="checkbox"/> Pest Control |
| <input type="checkbox"/> Personal Emergency Response Systems | | |

- A.2. The Case Management Contractor shall ensure that each individual served has a written individual Plan of Care. **The Case Management Agency which provides Case Management for an individual shall not provide any other services to an individual for who it serves as a Case Manager under this waiver.** All contractors shall ensure that services provided are ordered in the Plan of Care. The Plan of Care shall describe the medical and other services (regardless of funding source) to be furnished, the frequency and duration of each service, and the provider type required to furnish each service. All services shall be furnished pursuant to an approved written Plan of Care. The Contractor shall not bill for waiver services furnished prior to the development of the Plan of Care or services not included in the Plan of Care.

- A.3. The Contractor shall not provide services to individuals who are inpatients of a hospital, nursing facility, or ICF/MR. The Contractor shall be responsible for maintenance of a client record for each client served.

- A.4. Maintenance of records and reporting requirements shall be adequate to ensure acceptable and appropriate quality and continuity of care to clients in accordance with the Plan of Care.

- A.4.a. Such records shall be available for inspection, audit, reproduction, excerpts and transcription to officials of the State and/or their designees.

- A.4.b. Client records shall be available to authorized officials of the Tennessee Commission on Aging and Disability and the appropriate Area Agency on Aging and Disability.
- A.4.c. For services provided under the Medicaid Program, records shall be available to the Bureau of TennCare and the Centers for Medicare and Medicaid Services, or their designees, for inspection, audit, reproduction, excerpts and transcription. These records shall be maintained as required by Article 45, Part 74 Code of Federal Regulations.
- A.5 The Contractor shall complete Attachment A: DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST.
- A.6. All applicable standards of any State licensure or certification requirements must be met by providers. All providers shall be at least 18 years of age and shall not have been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act.
- A.7 Each waiver enrollee served must have a signed Freedom of Choice form documenting their choice of either institutional care in a Nursing Care Facility or the Home and Community Based Services Waiver program. A copy of each waiver enrollee's Freedom of Choice form shall be maintained at the appropriate Area Agency on Aging and Disability office.
- A.8 Each waiver enrollee served must have an annual reevaluation of the need for level of care. A copy of each enrollee's Level of Care form shall be maintained at the appropriate Area Agency on Aging and Disability office. Services for Waiver enrollees who do not receive timely annual reevaluations shall not be reimbursed.
- A.9 The contractor agrees to provide services in compliance with the terms and conditions stated by TennCare and the Administrative Lead Agency (ALA) policies and procedures for the operation of a comprehensive and coordinated system of services under the Home and Community Based Services (HCBS) Waiver pursuant to Tennessee Code Annotated Section 71-5-1401 through 1408. The contractor shall use these policies and procedures, as amended from time to time, to implement and operate this program. These policies and procedures are therefore incorporated as an integral part of this contract.
- A.10 Providers that utilize subcontractors in fulfilling the terms of their TennCare Provider Agreement, Interagency Agreement or contract are responsible for advising subcontractors of the contents of any applicable TennCare Bulletins that are issued.
- B. CONTRACT TERM:
- B.1. Contract Term. This Contract shall be effective for the period commencing on [START DATE] and ending on [End Date]. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- C. PAYMENT TERMS AND CONDITIONS:
- C.1. Service Plan. The Contractor agrees to provide services as authorized for each client by the individual Plan of Care. The State is not liable for any payment for services or units not contained in the approved Plan of Care or provided prior to the development of the plan. The Service Rates as provided by TennCare shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, travel, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.2. Payment Methodology. The Contractor agrees to accept the reimbursable cost rates for each service established by TennCare. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service subject to the actual monthly attendance and service provision data.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment.

- C.3. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.4. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.5. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.6. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.7. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not

be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

The Contractor further agrees that it shall not subcontract for Medicaid Waiver services under this Contract unless the subcontract contains, at a minimum, the following elements:

- D.5.a. Names and addresses of all parties entering into the subcontract;
- D.5.b. A statement requiring the subcontractor to perform in accordance with all the terms and conditions of this Contract which pertain to the service purchased under subcontract, and requiring the Contractor to assume responsibility if the selected subcontractor fails to do so;
- D.5.c. A statement requiring the Contractor to maintain responsibility for and assure the subcontractor's performance of administrative, supervisory, professional and service delivery responsibilities relative to meeting all requirements of this Contract;
- D.5.d. A statement assuring that subcontracts contain language and definitions consistent with this Contract;
- D.5.e. A statement requiring the subcontractor to comply with State and federal laws, rules and regulations;
- D.5.f. A statement identifying the party responsible for paying employment taxes;
- D.5.g. A statement that the persons delivering services meet minimum staff qualifications as required by this Contract;
- D.5.h. A statement identifying the specific services to be provided; and
- D.5.i. A statement identifying the termination procedures under the subcontract.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to

work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it shall be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Director
Division of Long Term Care
Bureau of TennCare
310 Great Circle Road
Nashville TN 37243
TELEPHONE: 615-507-6996
FAX: 615-532-9140

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
[CONTRACTOR NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Annual Report and Audit. The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to

the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives \$500,000 or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- E.5. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that: No federally appropriated funds have been paid or shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.6. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.8. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.9. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

E.11.a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;

- E.11.b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- E.11.c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- E.11.d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.12 Recoupment. Shall be in accordance with the terms and conditions stated by TennCare and in compliance with the ALA Operating Guidelines and as prescribed in federal and State law.
- E.13 HIPAA Compliance. Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and shall comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it shall cooperate with the State in the course of performance of the contract so that both parties shall be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor shall sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.
- E.14 TBI MFCU Access to Contractor and Provider Records.
Program Integrity Access to Contractor, Provider, and Enrollee Records.
- E.14.a. Pursuant to Executive Order 47 and 42 C.F.R. § 1007, the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) is the state agency responsible for the investigation of provider fraud, abuse, and neglect in the State Medicaid program (TennCare).
- E.14.b. Program Integrity assists TBI MFCU with provider cases and has the primary responsibility to investigate TennCare enrollee fraud and abuse.
- E.14.c. The Contractor shall immediately report to the TBI MFCU any known or suspected fraud, abuse, waste and/or neglect, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return monies allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing the TBI MFCU, and must cooperate fully in any investigation by the TBI MFCU or subsequent legal action that may result from such an investigation.
- E.14.d. The Contractor and all its health care providers, whether participating or non participating providers, shall, upon request, make available to the TBI MFCU any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. In addition, the TBI MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, whether participating or non-participating, during normal business hours, except under special circumstances when after hour admission shall be allowed. The TBI MFCU shall determine any and all special circumstances.

- E.14.e. Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, TBI MFCU is a health oversight agency. See 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. In its capacity as a health oversight agency, TBI MFCU does not need authorization in order to obtain enrollee protected health information (PHI). PHI is defined at 45 C.F.R. § 164.501. Because MFCU shall request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to those disclosures to TBI MFCU that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d) and 65 F.R. §§ 82462 and 82673.
- E.14.f. The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.
- E.14.g. The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to Program Integrity. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. The Contractor and its health care providers, whether participating or non-participating providers, shall, upon request, make available any and all supporting documentation/records relating to delivery of items or services for which TennCare monies are expended. Shall the need arise, Program Integrity must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE OF OFFICIAL]

Date

Tennessee Department of Finance and Administration TennCare Program:

M. D. Goetz, Jr., Commissioner

Date

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST

COMPLETION OF THIS FORM IS REQUIRED BY FEDERAL LAW (42 CFR § 455.104 AS AMENDED). FAILURE TO FULLY RESPOND TO THE QUESTIONS SET FORTH IN THIS FORM MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE IN OR TERMINATION OF THE CURRENT AGREEMENT WITH THE STATE AGENCY, AS REQUIRED BY 42 CFR 455.104 AS AMENDED.

The following terms are defined in accordance with 42 CFR 455.10 1 and have the following meaning when used in this Attachment.

“Agent” means any person who has been delegated the authority to obligate or act on behalf of a provider.

“Disclosing entity” means a Medicaid provider (other than an individual practitioner or group of practitioners), or a fiscal agent.

“Other disclosing entity” means any other Medicaid disclosing entity and any entity that does not participate in Medicaid, but is required to disclose certain ownership and control information because of participation in any of the programs established under title V, XVIII, or XX of the Act. This includes:

- (1) Any hospital, skilled nursing facility, home health agency, independent clinical laboratory renal disease facility, rural health clinic, or health maintenance organization that participates in Medicare (title XVIII);
- (2) Any Medicare intermediary or carrier; and
- (3) Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under title V or title XX of the Act.

“Fiscal agent” means a contractor that processes or pays vendor claims on behalf of the Medicaid agency.

“Group of practitioners” means two or more health care practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment).

“Indirect ownership interest” means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

“Managing employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, an institution, organization or agency.

“Ownership interest” means the possession of equity in the capital, the stock, or the profits of the disclosing entity.

“Person with an ownership or control interest” means a person or corporation that--

- (1) Has an ownership interest totaling 5 percent or more in a disclosing entity;
- (2) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;
- (3) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;
- (4) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;
- (5) Is an officer or director of a disclosing entity that is organized as a corporation; or
- (6) Is a partner in a disclosing entity that is organized as a partnership.

ATTACHMENT A

“Significant business transaction” means any business transaction or series of transactions that, during any one fiscal year, exceed the lesser of \$25,000 and 5 percent of a provider’s total operating expenses.

“Subcontractor” means--

- (1) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients; or
- (2) An individual, agency, or organization with which a fiscal agent has entered into a contract, agreement, purchase order, or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicaid agreement.

“Supplier” means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

“Wholly owned supplier” means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

Please complete the following. Each area must be filled out in its entirety. If you think that certain questions do not apply then you may state “not applicable”. Please print or type information.

PROVIDER NAME/ENTITY NAME	AGENT FOR SERVICE OF PROCESS (IF OTHER THAN PROVIDER/ENTITY)	
	Address:	
1.a.	Has there been a change of ownership, change of tax ID number or change in Tennessee Medicaid Provider Number for a previously enrolled Tennessee Medicaid provider? <div style="text-align: center;"><input type="checkbox"/> YES <input type="checkbox"/> NO</div>	
	If yes, give previous Tennessee Medicaid provider #:	
	and effective date of change of ownership, tax ID # or Medicaid Provider Number:	
	If yes, describe the relationship between (1) the current provider disclosing information through this form and the previous Medicaid provider; and (2) the similarities, if any, between the corporate board of the current provider disclosing information and the previous Medicaid provider (corporate board members, and ownership or control interest, etc.) (3) Circumstances of disenrollment or reason for change. (You may attach additional sheet, if necessary.)	

ATTACHMENT A

1.b.	Do you anticipate any change of ownership or control within the year?		
	(N/A for Not-for Profits)	<input type="checkbox"/> YES	<input type="checkbox"/> NO <input type="checkbox"/> N/A
1.c.	Do you anticipate filing for bankruptcy within the year?		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		
1.d.	Is this provider/facility operated by a management company, or leased in whole or part by any other organization?		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		
	If yes, give name and address of management company or leaseholder:		
1.e.	Has there been a change in Administrator (Executive Director), Director of Nursing or Medical Director within the last year?		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		
	If yes, when?		
	List name and address:		
1.f.	Is this facility chain affiliated?		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		
	If yes, list name, address and FEIN of the Corporation:		
	NAME	ADDRESS	FEIN
2.	List the name, address, and SSN/FEIN of each person or organization having direct or indirect ownership or control interest in the disclosing entity as defined by 42 CFR Section 455.10 1 and 102. Include social security number and/or IRS tax identification as appropriate.		
	(N/A for Not-for Profits) <input type="checkbox"/> N/A		

ATTACHMENT A

3.	<p>List the name, address, and SSN#/FEIN# of each person with an ownership or control interest, as defined by 42 CFR§ 455.101 and 102, in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more. Include social security number and/or IRS tax identification number of the subcontractor as appropriate.</p> <p>(N/A for Not-for Profits) <input type="checkbox"/> N/A</p>		
	NAME	ADDRESS	SSN/FEIN
4.	<p>Are any of the persons in # 2 and #3 above related to one another as spouse, parent, child, or sibling (including step and adoptive relationship)?</p> <p style="text-align: center;"><input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A</p>		
	If yes, list the following information:		
	NAME	SSN/FEIN	RELATIONSHIP
5.	<p>List the names of any other disclosing entity in which person(s) listed in Question 2 or board members of not-for-profit agencies have ownership of other Medicare/Medicaid facilities as defined by 42 CFR Section 455.101 and 102.</p>		
	NAME	ADDRESS	PROVIDER NUMBER
6.	<p>List the names and addresses of all other Tennessee Medicaid providers with which your health service, facility, and/or agency engages in a significant business transaction and/or a series of transactions that, during any one (1) fiscal year, exceed the lesser of \$25,000 and 5% of your total operating expense.</p>		
	NAME	ADDRESS	

ATTACHMENT A

7.	<p>List the name of any clients or organizations having direct or indirect ownership or control interest of 5% or more in the institution, organization, or agency that have been convicted of a criminal offense related to the involvement of such persons or organizations in any program established under Title XVIII (Medicare), Title XIX (Medicaid), or Title XX (Social Services Block Grants) of the Social Security Act, or any criminal offense in this state or any other state.</p> <p>(N/A for Not-for Profits) <input type="checkbox"/> N/A</p>	
	NAME	ADDRESS

8.	<p>List the name of any agent, board member, and/or managing employee of the disclosing entity who has been convicted of a criminal offense related to the involvement in any program established under Title XVIII, XIX, or XX of the Social Security Act, or any criminal offense in this state or any other state.</p>	
	NAME	ADDRESS

WHOEVER KNOWINGLY OR SHALLINGLY MAKES, OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT SHALL BE SUBJECT TO PROSECUTION UNDER APPLICABLE FEDERAL OR STATE LAWS. FAILURE TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED SHALL RESULT IN A DENIAL OF A REQUEST TO PARTICIPATE IN OR TERMINATION OF THE CURRENT AGREEMENT WITH THE STATE MEDICAID AGENCY, AS REQUIRED BY 42 CFR 455.104 AS AMENDED.

Provider Authorized Signature: I certify, under penalty of law, that the information given in this form is correct and complete to the best of my knowledge. I am aware that, should investigation at any time show any falsification, the above named provider/entity shall be considered for suspension from the Medicaid Program and/or for prosecution for Medicaid fraud. I hereby authorize TennCare, DMRS or the State of Tennessee to make all necessary verification concerning the above named provider/entity and further authorize each educational institute, medical/license board or organization to provide all relevant information that may be needed in connection with the above named provider/entity's participation in the Tennessee Medicaid Program.

ATTACHMENT A

Signature:

Date

:

**Printed
Name:**

Title: